

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT

MAY 03 2021

for the
District of
Division

Nathan Ochsner, Clerk of Court

Case No.

(to be filled in by the Clerk's Office)

Dylan Wayne Gunnels

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

"See attached"

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Dylan Wayne Gunnels

All other names by which
you have been known:

Dave Graham (Memorial Herman alias)

ID Number

02078412 - 3B2

Current Institution

Harris County Jail

Address

201 N. San Jacinto

Houston

City

TX

State

77002

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Officer D. Burton (HCSO)

Job or Title (*if known*)

Deputy

Shield Number

Employer

Harris County Sheriff's Office

Address

1200 Baker Street

Houston

City

TX

State

77002

Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 2

Name

All Deputies on scene (HCSO)

~~Job or Title (*if known*)~~

Cause #15 1697033, 1697034

Shield Number

Employer

Harris County Sheriff's Office

Address

1200 Baker Street

Houston

City

TX

State

77002

Zip Code

☒ Individual capacity☒ Official capacity

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Defendant No. 3

Name

Ed Gonzalez

Job or Title (if known)

Sheriff of Harris County

Shield Number

0001

Employer

Harris County

Address

1200 Baker Street,

Houston

City

TX

State

77002

Zip Code

☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name

Harris County

Job or Title (if known)

Shield Number

Employer

Texas

Address

Houston

City

TX

State

77002

Zip Code

☐ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Fourth Amendment (U.S.C.)

Fourteenth Amendment (U.S.C.)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

All defendants are employed by the state of Texas, or Harris County, Texas.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

Kreth Harrow Blvd, Harris County, TX, 77084

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

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C. What date and approximate time did the events giving rise to your claim(s) occur?

November 5th, 2020 9:00 - 11:00 AM

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

"see attached claim"

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

- Three broke ribs #8,9,10,
- Punctured liver
- Bruising on right flank
- Mental anguish
- Emotional stress
- Admitted to Memorial Herman for days. (Alias Dave Graham)

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

- Plaintiff seeks Damages From:
- Harris County in amount of \$10,000,000.00
 - Ed Gonzalez in amount of \$10,000,000.00
 - D. Burton in amount of \$10,000,000.00
 - Officers on scene in amount of \$100,000.00 each

Plaintiff seeks Punitive damages in the same amount from all parties above.

Emotional stress, mental anguish, physical harm, future harm

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☐ Yes

☒ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Harris County Jail, 701 N. Santa Fe, Houston, TX, 77002

Dorm 3 B 2 Kiosk/Request numbers:

20-0436082, 20-0465098, 21-0638621, 21-0639971

2. What did you claim in your grievance?

that D. Burton used excessive force in his arrest & no one stopped him

3. What was the result, if any?

Allegedly forwarded to I.A.D HC50

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

N.A.

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☐ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 3-26-2021

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Dylan W. Gunnels
Dylan W. Gunnels
02078412
701 N. San Jacinto
Houston TX 77002
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City State Zip Code

Telephone Number

E-mail Address

UNITED STATES DISTRICT COURT

For the Southern District of Texas

Houston Division

Dylan Wayne Gannels

- v -

D. Burton

Ed Gonzalez

All Officers on Scene

Harris County, Texas

Case # _____

Statement of Claim

D) Officer D. Burton (HCSO):

On or about Nov. 5th, 2020 after a short attempted flight from law enforcement the Plaintiff exited the vehicle he was in and approached officer D. Burton and layed face down in the prone position in order to surrender himself.

Once the Plaintiff was on the ground, face down in the prone position D. Burton jumped on the Plaintiff's back breaking three of his ribs (3, 9, & 10) and endangering his lives.

The Plaintiff screamed in agony & told the officer that he had broken his ribs & asked him to please get off him & stop the assault. To no avail.

D) Even after the Plaintiff was in mechanical restraints behind his back officer D. Burton continued to knee the Plaintiff in his right flank yelling at him to "Shut up pussy" numerous times.

After multiple strikes with his knee into the Plaintiff's side the officers then yelled back at other officers on scene that the Plaintiff was "the mother fucker that got Acevedo jammed up." A reference the Plaintiff believes to be in connection with an officer involved shooting that occurred in September of 2019 where a one F Acevedo was reprimanded for shooting the Plaintiff. See *Gunnels - v - Acevedo*. The two officers were assigned to the same district.

This is a fourth amendment violation claim. The Plaintiff believes that D. Burton used excessive force during his arrest. He believes that the force used was unnecessary & a wanton infliction of pain. It was not applied in a good faith effort to maintain discipline, but maliciously & sadistically to cause pain.

D.) No reasonable officers could agree that kicking or kneeling a non-resisting suspect in the side with force enough to cause broken ribs and/or lacerate his liver was reasonable or necessary under established law.

No force was necessary to maintain or restore discipline considering the Plaintiff was face down and in mechanical restraints.

All strikes by Defendant were applied with malice and sadistically; this is apparent by the amount of force he chose to use as well as the vulgarities and language deployed during the assault on the Plaintiff.

2. Ed Gonzalez Badge # 12

This is a supervisory-liability claim of a fourth and fourteenth amendment violation of the United States Constitution.

The Defendant Ed Gonzalez failed to adequately train and supervise officer D. Burton and others on scene in use of force.

D.2) Ed Gonzalez:

This Defendant has been notified by the Plaintiff via the Jail Kiosk on 201 N. San Jacinto building numerous times of the officers misconduct and excessive force. After having notice of his subordinates unconstitutional conduct he has failed to reprimand said subordinates or attempt to prevent a recurrence of such misconduct. In essence he has;

- Approved of the conduct & basis for it
- Condoned it
- turned a blind eye for fear of what he might see.

D.3) Officers on scene:

This is a fourth and fourteenth amendment violation claim against all officers on scene for acting in the excessive force used or inflicted by D. Burton and or failing to interview and or failing to protect the

D.3) The Plaintiff from the Defendant D. Burton.

The Plaintiff did not pose an immediate threat to the safety of law enforcement or others, nor was the Plaintiff actively resisting arrest or attempting to evade by flight.

D.4) Harris County's

This is a fourteenth amendment violation claim. Harris County, Texas acted with negligent conduct by failing to supervise its employee(s) mainly the Harris County Sheriff and his subordinates.

D.) Witness' to claims

- o Kelly Drane Wylie - 281-408-9615
- o Cy fair EMS on scene
- o Methodist North hospital staff
- o Memorial Herman trauma staff

Plaintiff was admitted to
Memorial Herman hospital under the
alias Dave Graham DOB 05-23-1986
SS # ***-**-9222